

M/L 103
05.7.2022
Court No.24
SD

WPA 5314 of 2021

Sk. Abdul Karim
Vs.
State of West Bengal & Ors.

Mr. Manas Kumar Das

...for the Petitioner.

Mr. Sutapa Sanyal
Ms. Susnita Saha

...for the State.

Mr. Dilip Kr. Chatterjee
Mr. Manojit Pal

...for the KMC.

None appears on behalf of the private respondent in Court today despite service. Affidavit of service filed by the petitioner in Court today be kept with the record.

The petitioner alleges illegal and unauthorized construction by the respondent nos.7 and 8 over the premises no.33B, Ahiri Pukur Road, Kolkata-700019 under the jurisdiction of the Kolkata Municipal Corporation.

According to the petitioner, the Kolkata Municipal Corporation failed to take into consideration his objection filed on January 27, 2021.

Learned advocate representing the Kolkata Municipal Corporation submits upon instruction from the Assistant Engineer (Civil) and the Executive Engineer (Building Department), Br. VIII dated July 4, 2022 that on receipt of the complaint from the petitioner the site was inspected on February 2, 2021 and it was found that the foundation work was made as per the sanctioned plan.

The premises was again visited on March 4, 2021 and it was detected that RCC columns were constructed in the ground floor beyond the sanctioned line. A stop work notice under Section 401 of the Kolkata Municipal Corporation Act, 1980 was served.

After service of notice the construction work remained suspended for a few months. On September 21, 2021, a letter was submitted before the Corporation that the unauthorized portion had been demolished and a prayer was made for withdrawal of the stop work notice. An undertaking was also filed mentioning that no construction will be made in deviation of the sanctioned plan.

The premises was further inspected on November 25, 2021 and it revealed that the columns which were constructed in violation of the sanctioned plan were demolished by the person responsible. Accordingly, the stop work notice was withdrawn on November 27, 2021. The construction resumed thereafter.

On January 11, 2022, the premises was again visited and it was observed that construction has been done upto the roof level of the second floor and the RCC columns were constructed on the fourth storey in deviation of the sanctioned plan and in violation of the notarized undertaking. A further stop work notice was issued on January 11, 2022.

On February 26, 2022, the premises was again visited and it was observed that RCC roof slab was cast on the fourth

storey defying the stop work notice. An FIR was lodged on February 26, 2022 before the Karaya Police Station.

Hearing order under Section 400(1) of the Kolkata Municipal Corporation Act was issued on March 9, 2022 directing the person responsible to demolish all unauthorized construction, the entire third floor and the portion of the second floor covering the open terrace which has been done in deviation of the sanctioned plan within seven days.

The demolition order could not be executed in view of the interim order of injunction passed by the learned Senior Magistrate, Alipore in Misc. Case (Arb.) No.06 of 2021 directing both the parties to maintain status quo. The order of status quo is subsisting till July 26, 2022. The Building Department has already filed an application seeking leave of the learned Court for undertaking the demolition proceedings.

From the aforesaid instruction, it appears that there has been flagrant violation of the provisions of the Kolkata Municipal Corporation Act, 1980. The person responsible has repeatedly made unauthorized construction despite filing undertaking of not making any such construction in violation of the plan sanctioned.

The person responsible also approached the Court of the learned Senior Magistrate and managed to obtain an order of status quo. As there is a specific finding upon inspection by the men and agents of the Kolkata Municipal

Corporation that there has been unauthorized construction in the said premises at the instance of the person responsible, the Building Department is directed to proceed with the order of demolition which has already been issued.

The order of status quo passed by the learned Senior Magistrate, Alipore in the aforesaid case cannot and ought not stand in the way of the Kolkata Municipal Corporation to demolish any construction which has been made devoid the sanctioned plan. An order of status quo can only be passed in respect of a property which has been constructed in accordance with the provisions of law and not in deviation thereof. An unauthorized construction cannot be permitted to stand only on the basis of an order of status quo passed by the learned Court. The same will give a premium to the unscrupulous and dishonest builders to hold on to the unauthorized construction by virtue of order passed by the Court.

The Building Department has already filed an application seeking leave of the learned Court for undertaking the demolition proceeding. The Building Department is directed to bring this order to the notice of the learned Senior Magistrate, Alipore who passed order of status quo in the case mentioned hereinabove in respect of the unauthorized construction made by the person responsible.

The Kolkata Municipal Corporation shall ensure that the order of demolition is executed at the earliest but

positively within a period of eight weeks from the date of communication of this order.

Instruction given by the Assistant Engineer (Civil) and the Executive Engineer (Building Department), Br. VIII dated July 4, 2022 to be retained with the records.

The writ petition is disposed of.

Urgent certified photocopy of this order, if applied for, be given to the parties, upon compliance of all formalities, on priority basis.

(Amrita Sinha, J.)